

ISSUE

ANSWER

FACTS

DISCUSSION

d. May not use or permit the use of the prestige of judicial office for fund raising....

These rules must be applied in combination in light of the proposed activities. The lengthy Comment to SCR 60.05(3)(c)2.d gives insight into application of this rule. It states in part:

SCR 60.05 should not be read as proscribing participation in de minimis fund-raising activities so long as a judge is careful to avoid using the prestige of the office in the activity.

The term “de minimis” is defined in SCR 60.01(4):

“De minimis” means an insignificant interest that does not raise reasonable question as to a judge’s impartiality or use of the prestige of the office.

Because the act of writing the script for the skits takes place behind the scenes, out of the public eye, it does not involve the use of the prestige of judicial office. Writing the script does not involve the actual solicitation of funds. If the script were written but the skit never performed, the ability of the charity to raise funds would not be affected. Therefore, writing the script constitutes a de minimis fund-raising activity, and is permitted by SCR 60.05.

However, the actual performance of the skits does constitute a fund-raising activity, and acting in a skit obviously constitutes personal participation. Because the humor in the skits is intended to attract attendance at the event and improve the ability of the charity to raise money, such participation would constitute participation by the judge in a fund-raising activity. Further, because the identity of the judge is well-known at an event intended to attract the local community, participation in the skit could by inference be taken to constitute the use of the prestige of the office on behalf of the charitable activity. Such actions are also proscribed by SCR 60.03(2), which states in part that:

A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge.

Therefore, the Committee concludes that the various provisions of SCR 60.05, 60.01, and 60.03, cited above, allow participation in writing the script but preclude acting in its performance.

B. SCR 60.03(1) and 60.05(1)

How might the judge's participation in the actual performance of the skits be viewed by the community? Two additional sections of the Code of Judicial Conduct give cause for concern. These sections are applied jointly because each involves the issue of the public image of a judge. SCR 60.03(1) states that:

A judge ... shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

SCR 60.05(1) states in part that:

A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

- (a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.
- b) Demean the judicial office

The proposed activity involves the public performance of skits which make fun of prominent local citizens, many of whom are responsible for the administration of the law, much in the manner of a celebrity roast. The activity is open to view by all citizens in attendance. While it is intended to be in good fun, not all citizens will necessarily interpret this humor in the same way. It may be taken by some to indicate a special (or "cozy") relationship between the judge and public officials, thus casting doubt on the ability of the judge to be impartial and undermining public confidence in the integrity of the judiciary.

The Comment to SCR 60.03(1) sets forth five criteria by which a judge's protected free-speech conduct must be appraised. As to three of these criteria, the proposed activity fails: it is public; it may be taken to indicate bias on the judge's part; and the deprecation of some public officials may be taken to indicate the judge's lack of respect for the judicial/legal system. Although the humor is not intended to indicate bias or lack of respect, intent is not the point. Rather, the question is whether a citizen not privy to the inner workings of government and the judicial/legal system could reasonably construe the skit in that manner. The Committee believes that such an interpretation is possible. Therefore, on these additional grounds, the Committee finds that performance in the charity fund-raising skit is not permitted by SCR 60.03(1) and 60.05(1).

It might be suggested that because the judge had engaged in the proposed activity prior to assuming the bench, continuation of the activity would therefore be permissible. However, application of such a principle would result in the creation of two classes of judges: those who could engage in an activity prohibited by the Code of Judicial Conduct because they had done so before becoming a judge, and those who could not. In the opinion of the Committee,

such a state of affairs would be both illogical and contrary to the intent of the Code of Judicial Conduct.

CONCLUSION

The Committee concludes that a judge may participate in the writing of a script for a skit to be performed at a charitable fund-raising event, but may not participate in the actual performance of the skit.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60 -- Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 98-3 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 19th day of February, 1998.

Thomas H. Barland
Chair